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this Memorandum Decision shall not be  
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collateral estoppel, or the law of the case.**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF S.K. )

DEBBRA HARTUNG, )

Appellant-Respondent, )

vs. )

STARKE COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee-Petitioner. )

No. 75A05-0602-JV-79

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APPEAL FROM THE STARKE CIRCUIT COURT  
The Honorable Kim Hall, Judge  
Cause No. 75C01-0501-JT-2

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**September 29, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Debbra Hartung (“Mother”) appeals from the trial court’s termination of her parental rights with respect to her son S.K. She presents two issues for our review:

1. Whether the trial court abused its discretion when it denied her motion for dismissal under Indiana Trial Rule 41(B).
2. Whether the Starke County Department of Child Services (“DCS”) presented sufficient evidence to sustain the termination of her parental rights.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

Mother has previously had her parental rights terminated with respect to two of her children. In July 2003, the DCS filed a petition alleging that S.K. was a child in need of services (“CHINS”). The petition alleged that S.K.’s “physical and mental health is seriously endangered due to an act by the natural parents which resulted in a bone fracture in the child[.]” Appellant’s App. at 41. The DCS placed S.K. in foster care.

The DCS established a case plan for Mother which required her to attend parenting classes, undergo counseling, keep scheduled visits with S.K., maintain stable housing, and maintain employment. Mother complied with the terms of the case plan for the most part, but she missed some counseling appointments and some visits with S.K. More importantly, Mother did not make progress in terms of her parenting skills and bonding with S.K. As a result, on January 14, 2005, the DCS filed a petition to terminate

Mother's parental rights with respect to S.K.<sup>1</sup> In that petition, the DCS alleged in relevant part as follows:

1. That the child has been under the supervision of the [DCS] for at least fifteen (15) of the most recent twenty-two (22) months under Cause no.75C01-0305-JC-010;
2. There is a reasonable probability that the conditions that resulted in the child's removal will not be remedied;
3. That the termination of the parent/child relationship is in the best interest of the child; [and]
4. That the [DCS] has a satisfactory plan for the care and treatment of the child[.]

Appellant's App. at 6.

On August 17, 2005, at the hearing on the termination petition, Mary Jo Buckley, a therapist who supervised several of Mother's visitations with S.K., testified that Mother: was unable to understand the basic needs of children; missed some visitations; had "very little interaction" with S.K. without prompting; showed a "lack of bonding [with S.K.] and the willingness to bond[;]" and "made no progress . . . in her ability to relate to [S.K.] or to take care of [S.K.]" over the course of the visitations. Transcript at 33, 35, 37. In addition, Gary Ekart, a family case manager for the DCS, also testified that Mother did not make any progress despite the services provided to her under the case plan. Judy Weitgenant, the Court Appointed Special Advocate, testified that she, too, had not seen Mother make any progress in terms of her parenting skills and that, in her opinion, termination of Mother's parental rights was in the best interest of S.K.

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<sup>1</sup> S.K.'s father's parental rights were also terminated, but he is not a party to this appeal.

The trial court entered its order terminating Mother's parental rights with respect to S.K. and made findings and conclusions. Mother now appeals.

## **DISCUSSION AND DECISION**

### **Issue One: Motion for Dismissal**

Mother first contends that the trial court abused its discretion when it denied her motion for dismissal under Indiana Trial Rule 41(B). In particular, Mother asserts that the DCS did not present any evidence that it had a satisfactory plan for the care and treatment of S.K. As such, she maintains that the DCS did not sustain its burden of proof under Indiana Code Sections 31-35-2-4 and -8. But the DCS points out that the trial court properly exercised its discretion in declining to render judgment on Mother's motion until the close of all of the evidence and in questioning one of the witnesses regarding the plan for the care and treatment of S.K. We agree with the DCS.

Mother is correct that the DCS did not present any evidence regarding a plan for the care and treatment of S.K. following termination of her parental rights. But at the conclusion of the factfinding hearing, the trial court asked counsel for the DCS, "[W]hat's the plan for the care and treatment of the child?" Transcript at 149. Counsel answered that he would have to defer to Katherine Purtee, a caseworker for the DCS. Purtee then stated that the plan was for S.K.'s foster parents to adopt him. Mother did not object either to the trial court's question, nor to Purtee's response.

Indiana Evidence Rule 614(b) provides that a trial court "may interrogate witnesses, whether called by itself or by a party." Accordingly, the trial court's question

and Purtee's answer were entirely appropriate and provided evidence of the plan for S.K.'s care and treatment. As such, Mother's contention on this issue is without merit.

### **Issue Two: Sufficiency of the Evidence**

Mother next contends that the evidence is insufficient to support the involuntary termination of her parental rights. Initially, we note that the purpose of terminating parental rights is not to punish parents, but to protect the children. Weldishofer v. Dearborn County Div. of Family & Children (In re J.W.), 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. "Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. This includes situations not only where the child is in immediate danger of losing his life, but also where the child's emotional and physical development are threatened." Id.

In reviewing a decision to terminate a parent-child relationship, this court will not set aside the judgment unless it is clearly erroneous. Everhart v. Scott County Office of Family & Children, 779 N.E.2d 1225, 1232 (Ind. Ct. App. 2002), trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. Id. When reviewing the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id.

To support a petition to terminate parental rights, the DCS must show, among other things, that there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child.

Ind. Code § 31-35-2-4(b)(2)(B). The DCS must also show that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(C), (D). These factors must be established by clear and convincing evidence. Ind. Code § 31-34-12-2.

In interpreting Indiana Code Section 31-35-2-4, this court has held that the trial court should judge a parent's fitness to care for his or her child as of the time of the termination hearing, taking into consideration evidence of changed conditions. J.K.C. v. Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984). However, recognizing the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. To be sure, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental and social growth is permanently impaired before terminating the parent-child relationship. Id. at 93.

A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change. Matter of D.B., 561 N.E.2d 844, 848 (Ind. Ct. App. 1990). Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve. Matter of D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985). When the evidence shows

that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County DPW, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother insists that she “has done everything that she has been asked to do.” Brief of Appellant at 6. But the evidence shows otherwise. The DCS presented evidence that Mother missed some of her scheduled visitation with S.K. Further, Mary Jo Buckley, a therapist who supervised several of Mother's visitations with S.K., testified that Mother: was unable to understand the basic needs of children; had “very little interaction” with S.K. without prompting; showed a “lack of bonding [with S.K.] and the willingness to bond[;]” and “made no progress . . . in her ability to relate to [S.K.] or to take care of [S.K.]” over the course of the visitations. Transcript at 33, 35, 37. And Judy Weitgenant, the Court Appointed Special Advocate, testified that she, too, had not seen Mother make any progress in terms of her parenting skills and that, in her opinion, termination of Mother's parental rights was in the best interest of S.K.

Mother merely asks that we reweigh the evidence, which we will not do. The evidence is sufficient to support the trial court's conclusions both that there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied and that a continuation of the relationship between Mother and S.K. poses a threat to the child's well-being. And there is also clear and convincing evidence that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. We conclude that the DCS presented sufficient evidence to support the trial court's termination of Mother's parental rights.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.